

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 1999-348-C - ORDER NO. 2000-0092
FEBRUARY 2, 2000

IN RE: Application of TON Services, Incorporated) ORDER
For A Certificate of Public Convenience and) GRANTING
Necessity to Provide Intrastate Resold) CERTIFICATE
Telecommunications Services and For)
Alternative Regulation)

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of TON Services, Inc. ("TON" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate resold telecommunications services between and among locations within the State of South Carolina as a non facilities-based interexchange telecommunications service provider. TON also requested that the Commission regulate its interexchange business service, consumer card, and operator services in accordance with the principles and procedures established for relaxed regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 1998) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed TON to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of TON's Application and of the manner and time in which to file the appropriate pleadings for participation in the

proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on January 12, 2000, at 11:00 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable Philip T. Bradley, Chairman, presided. Bonnie D. Shealy, Esquire represented the Company. Jocelyn D. Green, Staff Counsel, represented the Commission Staff.

Neil Vos, Chief Financial Officer of TON, appeared and offered testimony in support of the Application. According to Mr. Vos, TON proposes to offer prepaid debit cards in South Carolina. The record reveals this service will be available to residential and business customers. TON is a Utah corporation that was incorporated in June 1992. The Company received authority to transact business in South Carolina on June 31, 1994.

Mr. Vos's testimony reveals TON has the requisite technical, managerial, and financial ability to offer resold telecommunications services in South Carolina. TON is a wholly-owned subsidiary of Flying J, Incorporated. The record reveals the officers of the Company consist of J. Phillip Adams (President and Chief Operating Officer), Richard E. Germer (Senior Vice President), Joseph R. Kelley (Vice President and General Manager), Barre G. Burgon (Corporate Counsel and Corporate Secretary), and Mr. Vos. According to Mr. Vos, Mr. Kelley has an extensive amount of telecommunications experience and he has been employed with the Company since 1992. As a whole, the management staff consists of persons with experience in business management, finance, telecommunications, marketing, and engineering.

The record also reveals, if necessary, TON will rely on the resources of its parent company Flying J. The testimony reveals Flying J has an annual revenue of

approximately two and a half billion dollars. Regarding the Company's technical services, approximately one-half of TON's technical staff have degrees in electrical engineering. The Company's underlying carrier will be MCI WorldCom and TON will operate as a switchless reseller. TON will also rely on its underlying carrier for technical problems that arise concerning its services in South Carolina. Some of TON's prepaid calling cards are rechargeable; in addition, some of the cards expire one hundred eighty days after the first usage – other cards expire one hundred eighty days after the last usage.

TON's prepaid calling cards are marketed through Flying J outlets. TON closely controls how the cards are marketed, priced and advertised. As of the date of the hearing, TON had no plans to sell the cards to any other outlets. According to Mr. Vos, most advertising for the prepaid cards is done in the travel plaza. Information is displayed in the plaza that describes the services of the cards, pricing and usage issues and any other necessary matters for the buyer.

TON's prepaid calling card service eliminates the need for billing of calls made using the Company's debit card. However, the Company's customer service department does handle customer inquiries and complaints. The customer service department is available twenty-four hours a day, seven days a week.

TON also requested that the Commission approve alternative regulation for its interexchange business service, consumer card, and operator services. Mr. Vos is the regulatory contact person for the Company. As of the date of the hearing, TON had received certification to provide its telecommunications services in over twenty states. The Company had never been fined or sanctioned regarding its telecommunications services nor had the Company been denied the authority to operate in any state.

After full consideration of the applicable law, the Company's application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. TON is organized as a corporation under the laws of the State of Utah and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. TON operates as a non facilities-based reseller of interexchange services and wishes to provide its services in South Carolina.

3. TON has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to TON to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services which are consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of TON, including consumer card and operator services are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to TON also.

3. The Commission adopts a rate design for TON for its resale of residential services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. TON shall not adjust its residential rates below the approved maximum level without notice to the Commission and to the public. TON shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications,

etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1998).

5. If it has not already done so by the date of issuance of this Order, TON shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

6. TON is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. TON shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If TON changes underlying carriers, it shall notify the Commission in writing.

9. TON shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on

a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. TON shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. Attachment B shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

11. As a condition of offering debit card services, the Commission requires the Company to post with the Commission a bond in the form of a Certificate of Deposit worth \$5,000 drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed in one year.

12. If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, or as approved by the Commission in a special promotion, then the Company will withdraw its cards from that retail outlet. The Commission strongly suggests that the Company enter into written agreements with its South Carolina retail

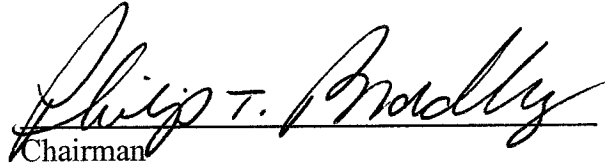
outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card.

13. With regard to the origination and termination of toll calls within the same LATA, TON shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), and 47 CFR 51.209.

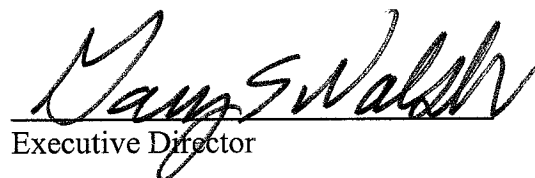
14. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

15. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

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ATTACHMENT A

**ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS
FOR INTEREXCHANGE COMPANIES AND AOS'S**

COMPANY NAME

FEI NO.

ADDRESS

CITY, STATE, ZIP CODE

PHONE NUMBER

- (1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS* FOR
12 MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING _____.
- * THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION WORK IN
PROGRESS, ACCUMULATED DEFERRED INCOME TAX, CONTRIBUTIONS IN AID OF
CONSTRUCTION AND CUSTOMER DEPOSITS.
- (4) PARENT'S CAPITAL STRUCTURE* AT DECEMBER 31 OR FISCAL YEAR ENDING
_____.
- * THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT PORTION
PAYABLE), PREFERRED STOCK AND COMMON EQUITY.
- (5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING
DECEMBER 31 OR FISCAL YEAR ENDING _____.
- (6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE AMOUNT
OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS WELL AS
METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT (SEE #3
ABOVE).

SIGNATURE

NAME (PLEASE TYPE OF PRINT)

TITLE

AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION

103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

Company Name (Including dba Name(s) or Acronyms used or to be used in South Carolina)

Business Address

City, State, Zip Code

A.

General Manager Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

B.

Customer Relations (Complaints) Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

C.

Engineering Operations Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

D.

Test and Repair Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

E.

Contact for Emergencies During Non-Office Hours (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

F.

Financial Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

G.

Customer Contact Telephone Number for Company (Toll Free)

This form was completed by

Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)
or Utilities Department at (803-896-5105).**